

**JACKSON LEWIS P.C.**

Joshua A. Sliker (Nevada Bar No. 12493)

Joshua.Sliker@jacksonlewis.com

300 S. Fourth Street, Suite 900

Las Vegas, Nevada 89101

Telephone: (702) 921-2460

Facsimile: (702) 921-2461

**CHARIS LEX P.C.**

Sean P. Gates (*admitted pro hac vice*)

sgates@charislex.com

Douglas J. Beteta (*admitted pro hac vice*)

dbeteta@charislex.com

301 N. Lake Ave., Suite 1100

Pasadena, California 91101

Telephone: (626) 508-1717

Facsimile: (626) 508-1730

Attorneys for Plaintiff/Counter-Defendant

TESLA, INC.

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

TESLA, INC., a Delaware corporation,

Plaintiff,

vs.

MARTIN TRIPP, an individual,

Defendant.

AND RELATED COUNTERCLAIMS

Case No. 3:18-cv-00296-LRH-CLB

**TESLA, INC.'S MOTION TO FILE  
SURREPLY IN OPPOSITION TO  
MOTION TO COMPEL DEPOSITION OF  
NON-PARTY ELON MUSK**

1 Plaintiff and Counter-Defendant Tesla, Inc. (“Tesla”), hereby moves for an order granting it  
2 leave to file the surreply attached hereto as Exhibit A.

3 Surreplies are appropriate where the moving party raises a new matter on reply. *Iloane v.*  
4 *Commissioner*, No. 3:09-CV-00243-RCJ-(RAM), 2010 U.S. Dist. LEXIS 71808, at \*9 (D. Nev.  
5 Mar. 11, 2010) (“Because Plaintiff’s reply raised issues not in his initial motion, the Court grants  
6 Defendant leave to file a surreply and will consider Defendant’s arguments raised in its surreply”);  
7 *FNBN-RESCON I LLC v. Ritter*, No. 2:11-cv-1867-JAD-VCF, 2014 U.S. Dist. LEXIS 130128, at  
8 \*17 (D. Nev. Mar. 12, 2014) (considering surreply where reply “raised new arguments”);  
9 *Escobedo-Gonzalez v. Kerry*, No. 2:15-CV-1687 JCM (PAL), 2018 U.S. Dist. LEXIS 170634, at  
10 \*7 (D. Nev. Oct. 3, 2018) (same). This is because “new material does not belong in a reply brief.”  
11 *Von Brimer v. Whirlpool Corp.*, 536 F.2d 838, 846 (9th Cir. 1976).

12 Here, Tripp raises new arguments and cites new materials in his reply brief. First, Tripp  
13 raises new arguments regarding the applicability of the apex doctrine. Tripp argued in his opening  
14 brief that this district has rejected the apex doctrine as a matter of law. (ECF 107 at 7-8.) Tesla  
15 responded to that argument in its opposition. (ECF 112 at 5-7.) In his reply brief, however, Tripp  
16 cites new material, quoting from a transcript of a case management conference, to support his  
17 arguments. But Tripp does not submit the entire transcript, and he fails to cite the portions of the  
18 transcript in which the Court directed him to conduct “extensive” discovery by less intrusive means  
19 regarding “specific to any issues related to Mr. Musk and his personal knowledge, statements, et  
20 cetera” —exactly the type of discovery Tesla maintains Tripp failed to take. In its proposed  
21 surreply, Tesla provides the entire transcript and cites the passages regarding the discovery Tripp  
22 was ordered (but failed) to take.

23 Second, Tripp submits a deposition transcript from an entirely unrelated case to argue that  
24 he needs a full seven hours for the deposition. He claims based on about 10 minutes of colloquy in  
25 the transcript that he needs three hours more than the four hours he requested. Tesla’s proposed  
26 surreply addresses this new material, showing that the Tripp’s arguments are unfounded and  
27 irrelevant.  
28

1 The Court should grant this motion to allow Tesla to address the improperly raised new  
2 arguments and materials raised for the first time in Tripp's reply.

3  
4 Dated: December 10, 2019

**CHARIS LEX P.C.**

5  
6 By: /s/ Sean P. Gates  
7 Sean P. Gates  
8 Attorneys for Plaintiff and  
9 Counter-Defendant Tesla, Inc.  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28